IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 25714 of 2006(J)

PETITIONERS:

1. REMAMANI.V., ALIYAMMAZHIKATHU VEEDU,
   THEKKUMKARA CHERRY, MAYYANADU, KOLLAM.

2. JAHANGEER, NEESAREEMANZIL,
   THEKKUMKARACHERRY, MAYYANADU, KOLLAM.

3. VASANTHY, W/O.SURENDRAN,
   SIVAMAYAMANDIRAM, PULLICHIRA,
   MAYYANADU, KOLLAM.

4. PRASANNAKUMARI, ALIYAMMAZHIKATHU VEEDU,
   THEKKUMKARACHERRY, MAYYANADU, KOLLAM.

5. N.RAVEENDRAN, ALIYAMMAZHIKATHU VEEDU,
   THEKKUMKARACHERRY, MAYYANADU, KOLLAM.

6. LAILA, LEGAL HEIR OF LATE JANARDHAN
   LEELA, CHENCHERRY PUTHENVEEDU (LAILA NIVAS),
   THEKKUMKARACHERRY, MAYYANADU, KOLLAM.

BY ADVS. M/S.S.K.DEVI AND SANTHOSH P.ABRAHAM

RESPONDENTS:

1. THE DISTRICT COLLECTOR, CIVIL STATION, KOLLAM.

2. THE SPECIAL TAHSILDAR (LA),
   KIP XI, KOTTIYAM, KOLLAM.

3. STATE OF KERALA, REPRESENTED BY
   THE PRINCIPAL SECRETARY, FINANCE DEPARTMENT,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	TRUE COPY OF THE JUDGMENT DATED 17/12/1999 IN LAR.NO.286/99 OF THE PRINCIPAL SUB JUDGE, KOLLAM.
EXT.P2	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE FIRST PETITIONER DATED 26/9/2000 BEFORE THE FIRST RESPONDENT.
EXT.P3	TRUE COPY OF THE APPLICATION FILED U/S.281 OF THE ACT BY THE 2ND PETITIONER DATED 25.9.2000 BEFORE THE FIRST RESPONDENT.
EXT.P4	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE THIRD PETITIONER DATED 25.9.2000 BEFORE THE 1ST RESPONDENT.
EXT.P5	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE THIRD PETITIONER DATED 25/9/2000 BEFORE THE FIRST RESPONDENT.
EXT.P6	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE 4TH PETITIONER DATED 25/9.2000 BEFORE THE FIRST RESPONDENT.
EXT.P7	TRUE COPY OF THE APPLICATION FILED U/S.281 OF THE ACT BY THE 4TH PETITIONER DATED 25/9/2000 BEFORE THE FIRST RESPONDENT.
EXT.P8	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE 5TH PETITIONER DATED 25/6/2000 BEFORE THE FIRST RESPONDENT.
EXT.P9	TRUE COPY OF THE APPLICATION FILED U/S.28A OF THE ACT BY THE 6TH PETITIONER DATED 25/9/2000 BEFORE THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

ahz/

K.T. SANKARAN, J.

W.P.(C).NO. 25714 OF 2006

Dated this the 14th day of December,2006

JUDGMENT

The lands belonging to the petitioners were acquired for the purpose of Kallada Irrigation Project. Award was passed fixing the compensation. The petitioners did not make any application for reference under Section 18 of the Land Acquisition Act. One Lalitha Pushpangathan, whose land was also acquired under the same notification and for the same purpose, had filed application for reference and that Reference was numbered as L.A.R.No.286 of 1989 before the Principal Sub Court, Kollam. L.A.R.No.286 of 1989 was disposed of as per Ext.P1 judgment dated 17.12.1999 and the amount of compensation was enhanced. Thereupon, the petitioners submitted Exts.P2 to P9 applications before the first respondent under Section 28A of the Land Acquisition Act.

2. The grievance voiced by the petitioners in this Writ Petition is that though they submitted the applications under Section 28A in the year 2000, those applications are not disposed of so far. The prayer in the Writ Petition is for the issue of a writ of mandamus commanding the first respondent to dispose of Exts.P2 to P9 applications.

3. The second respondent, the Special Tahsildar (LA), has filed a counter affidavit wherein it is admitted that the petitioners had filed the applications under Section 28A of the Land Acquisition Act on 31.10.2000. It is stated that the judgment in L.A.R.No.286 of 1989 was passed on 17.12.1999. But the applications under Section 28A were filed after the lapse of ten months. It is also stated in the counter affidavit that except the fourth petitioner, Prasannakumari,

the other petitioners have not produced the certified copy of the judgment and decree in L.A.R.No.286 of 1989. The counter affidavit conveniently omits to state whether the application submitted by the fourth petitioner was disposed of. It is also not stated that the applications filed by the other petitioners were rejected on the ground of limitation. The fact remains that Exts.P2 to P9 are not disposed of so far. Section 28A of the Land Acquisition Act provides a period of limitation of three months for filing an application. The limitation is to be reckoned from the date of award under which the compensation was enhanced. The proviso to Section 28A provides that in computing the period of three months, the day on which the award was pronounced and the time required for obtaining a copy of the award shall be excluded. There is no case for the petitioners that they have common title over the properties in question. There is also no case that they are in

joint possession of the same. Therefore, each of the petitioners should have produced certified copy of the award of the Land Acquisition Court to prove that the application under Section 28A was filed well within time. Learned counsel for the petitioners submits that the petitioners except the fourth petitioner may be afforded an opportunity to produce certified copy of the judgment in L.A.R.No.286 of 1989 within a period of one month, to prove that the applications were filed within the period of limitation.

4. In the facts and circumstances mentioned above, there will be a direction to the second respondent to dispose of Exts.P2 to P9 applications within a period of six months, after issuing notice to the petitioners and after affording an opportunity of being beard to them. Petitioners 1 to 3, 5 and 6 shall produce certified copy of the judgment in L.A.R.No.286 of 1989 before the second

respondent within a period of one month. On production of copy of judgment, the first respondent shall decide the question whether the application submitted by each of the petitioners is within the period of limitation. The second respondent shall thereafter consider the applications on the merits and dispose of the same in accordance with law, if the applications are not barred by limitation.

The Writ Petition is allowed as indicated above.

(K.T.SANKARAN)
Judge

ahz/